IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 230 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CENTRAL BUREAU OF INVESTIGATION THRO' INVESTIGATING OFFICER

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 230 of 2000

MR MUKESH R SHAH for Petitioner No. 1

Ms P B Sheth, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 15/10/2003

ORAL JUDGEMENT

The petitioner Central Bureau of Investigation,

through its Investigating Officer at Gandhinagar, has preferred this Criminal Revision Application under section 379 read with section 401 of the Criminal Procedure Code, 1973 (for short, 'the Code') in order to challenge an order dated 18.4.2000 recorded by the learned Chief Metropolitan Magistrate at Ahmedabad in RC 1(S)2000 GNR directing that muddamal instruments be handed over to the second respondent pending trial on condition enumerated in the order itself. It appears that the present contesting respondent is alleged to have committed offence punishable under sectios 3 and 6 of the Indian Wireless and Telegraph Act, 1933 read with section 120-B and 420 of IPC. It is alleged against the petitioner that the petitioner had taken 75 DOT telephone lines and 25 telephone lines from a private telephone exchange which have been unauthorisedly collected and used in the aforesaid premises. A raid was carried out and the instruments were seized. Thereafter the contesting respondent submitted application for interim custody thereof. It seems that the trial court granted the said application and directed that the interim custody of the said instruments be given to the contesting respondents on condition stated in that order. Feeling aggrieved by the said order of the trial court, the petitioner has preferred this revision application before this Court. It has been mainly contended here that the petitioner has misused the aforesaid position and has actually started almost a parallel exchange without any licence and without any other authority and, therefore, if the instruments are entrusted to the petitioner during the pendency of the criminal case, then in that case, the said instruments are likely to be misused and the contesting respondents are likely to run a parallel telecommunication system without licence and contrary to the provisions of law. That therefore, the trial court has committed serious illegality in entrusting the said muddamal instruments to the contesting respondents by way of interim order.

2. On receiving the revision application, rule was issued which was duly served on the respondents. In response to the service of rule, Ms. P B Sheth, learned APP appears for respondent no.1 State of Gujarat. Though served, respondent no.2 has not turned up.

3. I have heard the learned Advocate for the petitioner and learned APP for the State. The learned APP has supported the case of the petitioner. It appears that the contesting respondent was found running a parallel telecommunication system without authority of law and the licence. Learned Advocate for the petitioner

has, therefore, contended that if the instruments are entrusted to the contesting respondents by way of interim custody, then naturally they are likely to be misused by the second respondent. It is also his argument that the second respondent does not possess any licence for running a private telecommunication system. It, therefore, appears that this aspect has not been properly considered by the trial court while passing the order for entrusting the said muddamal to the contesting respondent. In that view of the matter, the order of the trial court suffers from the said infirmity of non-application of mind. The fact that if the instruments are handed over to the contesting respondents even temporarily, then they are likely to be misused and are likely to be used for parallel telecommunication system. In that view of the matter, the order impugned in this revision application appears to be illegal on the face of it and, therefore, it is necessary to quash and set aside the same.

4. For the foregoing reasons, this Criminal Revision Application is allowed. The impugned order passed by the learned Chief Metropolitan Magistrate, Ahmedabad dated 18.4.2000 in RC No.1(S)2000-GNR is set aside. Rule is made absolute accordingly.

[D P Buch, J.]
msp